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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Paula Mary Sosalla et al. Art Unit 3761
Serial No. 09/977,062
Filed October 12, 2001
Confirmation No. 1782
For DISPOSABLE ABSORBENT ARTICLE HAVING A COLOR GRADATION FEATURE
Examiner Michele M. Kidwell

APPEAL BRIEF

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August 29, 2007

APPEAL BRIEF

This is an appeal from the final rejection of the claims of the above-referenced application made in the final Office action dated March 30, 2007. A Notice of Appeal was filed on June 29, 2007.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any pending appeals or interferences which may be related to, directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-13, 15-17, 19, 20, 23 and 24 are currently pending in the application for consideration. Claims 14, 18, 21, and 22 were cancelled during prosecution of this application. A copy

of the claims involved in this appeal appears in the Claims Appendix of this Brief.

Claims 1-13, 15-17, 19, 20, 23 and 24 stand rejected.

The rejections of claims 1-13, 15-17, 19, 20, 23 and 24 are being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification and drawings, claim 1 is directed to a disposable absorbent article 20 having an area which is visible when the article is worn. See page 9, lines 5-14 and Figs. 1-3. A color gradation 90 in the area provides a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color when the area is dry. See page 10, lines 8-14 and Figs. 1-3. A visible element (e.g., 70, 72, 76, 78) is separate from the color gradation 90 and disposed in the area at a location where the coloration of the color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation. See page 11, lines 2-12 and Figs. 1 and 3.

Claim 15 is directed to a disposable absorbent pant 20 having a front waist region 22, a back waist region 24 and a crotch region 26 extending between and interconnecting the front

and back waist regions. See page 6, line 25 through page 7, line 2 and Fig. 3. The pant 20 comprises an outer cover 40 with an interior surface and an opposite exterior surface 30. See page 8, lines 24 and 25, and Fig. 3. An absorbent material 44 is disposed on the interior surface of the outer cover 40. See page 7, lines 16-20 and Fig. 3. A color gradation 90 is on an area of the pant which is visible when the pant is worn and provides a coloration which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region when the pant is dry. See page 9, lines 5-14, page 10, lines 8-14 and Figs. 1-3. A wetness indicator 78 is separate from the color gradation 90 and disposed in the crotch region 26 at a location where the coloration of the color gradation is of lower intensity or absent such that any indication of wetness by the wetness indicator remains visible and is not obscured by the color gradation. See page 11, lines 2-12 and Figs. 1 and 3.

Claim 23 is directed to a disposable absorbent article 20 having an area which is visible when the article is worn. See page 9, lines 5-14 and Figs. 1-3. A permanent graphic comprises a color gradation 90 in the area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color. See page 10, lines 8-14 and Figs. 1-3. A visible element (e.g., 70, 72, 76, 78) is separate from the permanent graphic and disposed in the area at a location where the coloration of the color gradation 90 is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation. See page 11, lines 2-12 and Figs. 1 and 3.

Claim 24 is directed to a disposable absorbent article 20 comprising a color gradation 90 that is visible when the article

is worn. See page 9, lines 5-14 and Figs. 1-3. The color gradation 90 comprises a coloration that varies in intensity from an area of higher intensity of color to a separate area of lower intensity of color. See page 10, lines 8-14 and Figs. 1-3. A visible element (e.g., 70, 72, 76, 78) is separate from the color gradation 90 and disposed at a location where the coloration of the color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation. See page 11, lines 2-12 and Figs. 1 and 3.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellants appeal the rejections of claims 1-13, 15-17, 19, 20, 23 and 24 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,297,424 (Olson et al.).

VII. ARGUMENT

Claims 1-13, 15-17, 19, 20, 23 and 24 are unanticipated by and patentable over U.S. Patent No. 6,297,424 (Olson et al.).

Claims 1-3, 12, 13, and 19

Claim 1 is directed to a disposable absorbent article having an area which is visible when the article is worn. A color gradation in this area provides a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color when the area is dry. A visible element, separate from the color gradation, is disposed in the area at a location where the coloration of the color gradation

is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation.

The essence of claim 1 is that when the absorbent article is dry, the color gradation over the area is visible, i.e., both a higher color intensity and a lower color intensity of the color gradation are visible over the area when the article is dry such as is illustrated in Figs. 1 and 2 of the present application (see reference number 90). As explained in appellants' specification, the use of a color gradation on an absorbent article is beneficial for a number of reasons. For one, the higher intensity coloration can be used to mask features not intended to be seen (e.g., underlying anatomical features, bodily exudates, or structural components of the absorbent article). On the other hand, the visible elements can be placed at locations where the coloration is of lower intensity, or where coloration is absent altogether, so that the visible element will not be obscured by the more intense coloration. See page 10, line 25 through page 11, line 6 of appellants' specification.

Claim 1 is submitted to be unanticipated by and patentable over U.S. Patent No. 6,297,424 (Olson et al.) in that the reference fails to disclose or suggest an absorbent article having a color gradation that provides a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color when the area is dry, and a visible element separate from the color gradation.

In particular, Olson et al. disclose an absorbent article, such as a training pant, configured to provide an indication of wetness. The absorbent article includes a permanent character graphic (70), e.g., a dog, and several active object graphics (78), e.g., fish. Upon contact with urine (i.e., upon wetting

of the article), the active graphics (78) either appear, disappear, or change to a brighter or darker color, thereby indicating wetness. The outer cover of the article has a white appearance (column 9, lines 35-42). The cover includes a simulated elastic waistband (80), a simulated fly opening (82), and simulated elastic leg bands (84).

At page 2 of the final Office action, the Office characterizes the fish (78) of the Olson et al. article as being analogous to the recited color gradation that provides a coloration which varies in intensity over the area from a high intensity of color to a lower intensity of color. As best understood from the Response to Arguments (page 6) of the final Office action, the Office's position is that the fish (78), which Olson et al. teach is an active graphic, has a higher intensity when the article is dry (i.e., before the graphic fades) and a lower intensity when the article is wet (i.e., when the graphic fades). Alternatively, the fish (78) of Olson et al. can either disappear, fade, or appear over time when exposed to the environment but not exposed to urine. In other words, the fish (78) is capable of appearing, fading, or disappearing based on some interaction by the wearer (i.e., humidity or vapor following urination) or the surrounding environment.

The fish (78) of Olson et al. are clearly not analogous to the recited color gradation. Rather, only one color intensity appears over the area defined by the fish. Instead, the fish (78) of Olson et al. are more properly characterized as corresponding to the recited visible element. As shown in Fig. 1 of appellants' specification, the color gradation (90) is an area wherein the color intensity incrementally changes from an area of higher intensity to an area of lower intensity, presenting an entire area of which a gradation is visible (i.e.,

more than one color intensity is visible over the area at the same time). The fish of Olson et al., at any given time, do not have areas of incrementally varying color intensity. Rather, at any given time, the color intensity of the fish is generally uniform even if the color intensity has changed from its initial intensity.

Moreover, appellants' specification discloses fish (see reference number 78 of Fig. 1) that are substantially the same as those shown in Olson et al. (which is commonly assigned to Kimberly-Clark Worldwide, Inc.). In other words, the fish (78) of Olson et al. correspond to the fish (78) disclosed by appellants. Appellants' specification makes it clear that the fish disclosed therein correspond to the claimed visible element, and not the claimed color gradation. Likewise, Olson et al.'s fish correspond to the claimed visible element and not the claimed color gradation. Thus, characterization of the fish of Olson et al. as corresponding to the recited color gradation is not a reasonable interpretation of the claims when considered in view of appellants' specification or the teachings of Olson et al.

Furthermore, the Office asserts that appellants' arguments are not within the scope of the claim in that claim 1 does not recite that the color gradation in an area incrementally changes in color intensity from an area of higher intensity to an area of lower intensity. See the Continuation Sheet of the Advisory Action dated May 30, 2007. As best understood by Appellants, the Office is taking the position that the color gradation recited in claim 1 is not an "incremental" change in color intensity. That is, the change in color intensity may be abrupt or substantial (e.g., a different color) and still fall within the scope of the claim.

Claim 1 particularly recites, in pertinent part, "a color **gradation** in said area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color when the area is dry." (Emphasis added). The term "color gradation" means a visible, gradual or incremental change in color (e.g., in color hue, brightness, lightness and/or ink saturation). See, e.g., appellants' specification at page 10, lines 9-11; page 11, lines 24-27; page 11, line. See also Merriam-Webster's online dictionary at www.merriam-webster.com ("gradation" being defined as a gradual passing from one tint or shade to another). In other words, the term gradation as used in claim 1 provides for the incremental change (i.e., gradual passing) in color intensity (e.g., by changing the hue, brightness, lightness and/or saturation of ink of the color) from an area of higher intensity to an area of lower intensity. Thus, appellants' arguments are submitted to be fully within the scope of the claim.

Accordingly, Olson et al. fail to disclose, nor even suggest, a color gradation which provides a coloration that varies in intensity over the area from a higher intensity of color to a lower intensity of color when the area is dry as recited in claim 1.

For the above reasons, claim 1 is submitted to be unanticipated by and patentable over Olson et al.

Claims 2, 3, 12, 13, and 19 depend directly or indirectly from claim 1 and are submitted to be patentable over the references of record for at least the same reasons as claim 1.

Claims 4-11

Claim 4 depends from claim 1 and further recites that the visible element is a wetness indicator (i.e., capable of indicating the article is wet). In the final Office action, at page 6, last paragraph, the Office characterizes the permanent graphic of Olson et al. (i.e., the dog graphic (70)) as the visible element recited in claim 1. However, Olson et al. clearly teach that the dog graphic (70) is a permanent character graphic (see column 13, lines 16-20), which is defined at column 3, lines 24-29 as a graphic that does not substantially change its degree of visibility when the absorbent article is insulted. Thus, there is no way of using the permanent graphic (70) as a wetness indicator to indicate that the article has been wetted.

Moreover, appellants' specification discloses substantially the same permanent graphic and active graphic as Olson et al. See appellants' dog illustrated in Fig. 1 and referred to as 70 in comparison to Olson et al.'s dog illustrated in Fig. 1 therein and also referred to as 70. See also appellants' fish illustrated in Fig. 1 and referred to as 78 in comparison to Olson et al.'s fish illustrated in Fig. 1 therein and also referred to as 78. Both Appellants' and Olson et al.'s specification makes it abundantly clear that the permanent graphic is different than the claimed wetness indicator, which is defined by the active graphic (e.g., fish 78 of Fig. 1). Thus, the Office's characterization of the permanent graphic of Olson et al. being analogous to the recited wetness indicator is not a reasonable interpretation of the claims in view of appellants' specification and Olson et al.

Accordingly, Olson et al. fail to teach or suggest that the visible element (i.e., permanent graphic 70) is a wetness indicator as recited in claim 4.

For these additional reasons, claim 4 is further submitted to be patentable over the references of record. Claims 5-11 depend directly or indirectly from claim 4 and are submitted to be patentable over Olson et al. for the same reasons.

Claim 20

Claim 20 depends indirectly from claim 1 and further recites that the color gradation is printed on the article with a permanent ink. The term permanent is defined in the present application at page 3, lines 22-25 as meaning that the graphic does not substantially change its degree of visibility when the absorbent article is insulted. That is, the color gradation printed in permanent ink (i.e., a permanent graphic) will not change its degree of visibility when the absorbent article is insulted.

While Olson et al. do teach the use of permanent ink in reference to graphic elements such as the dog (70) (characterized by the Office as the visible element recited in claim 1), Olson et al. fail to disclose or even suggest a color gradation that is printed with permanent ink.

The Office opines on page 7, first full paragraph of the final Office action, that the permanent ink of the fish (78) can be a fading graphics that simply change color to blend in with the background. As mentioned above, the term permanent requires that the degree of visibility is not substantially changed when the absorbent article is insulted. Clearly, the degree of visibility of the fading graphic is diminished by blending into the background of the absorbent article when the article of Olson et al. is insulted. As such, the fish (78) of Olson et al. cannot be said to be printed with permanent ink as recited in claim 20.

In the Advisory Action dated May 30, 2007, the Office found Appellants' arguments unpersuasive because the appellants relied on the definition of a "permanent graphic" to argue the rejection. Appellants' relied on the definition of "permanent graphic" as it appears on page 3, lines 22-25 to provide insight as to what appellants' mean by "permanent". Page 3, lines 22-25 of appellant's specification distinguish a "permanent graphic" from an "active graphic" by explaining what it means for a graphic to be permanent as opposed to being active. A graphic that is active is responsive to urine, time, temperature, and/or oxygen to cause a visible change in the graphic. A graphic that is permanent, on the other hand, does not substantially change. Accordingly, one of ordinary skill in the art would readily conclude that the recited permanent ink (which is necessary for the defined permanent graphic) would not substantially change when the absorbent article is insulted. The fish of Olson et al., which are an active graphic, do substantially change and therefore are not permanent and are not printed on the article with permanent ink as recited in claim 20.

Accordingly, claim 20 is submitted to be unanticipated by and patentable over Olson et al. for these additional reasons.

Claims 15, 16 and 17

Claim 15 is directed to a disposable absorbent pant that recites, among other elements, a color gradation providing a coloration which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region when the pant is dry.

Claim 15 is submitted to be unanticipated by and patentable over the references of record, and in particular Olson et al. for at least the same reasons as claim 1. That is, Olson et al.

fail to disclose or suggest the recited color gradation in an area that provides a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color when the area is dry, and a visible element separate from the color gradation.

In addition, claim 15 recites that the coloration provided by the color gradation varies from a higher intensity of color "in the vicinity of the waist region" to a lower intensity of color "toward the crotch region" of the pant. As mentioned above, the visible element (e.g., active graphics) can be placed at locations where the coloration is of lower intensity, or where coloration is absent altogether, so that the visible element will not be obscured by the more intense coloration. When active graphics are used, they are placed in the crotch region of the pant since this is the target region for urine, which activates the active graphics. It is especially important that the visual element be placed in an area of low color intensity or no color whatsoever when the visual element is a fading or appearing active graphic to insure that the disappearance or appearance of such graphics after urination is not obscured by the more intense gradation. See page 11, lines 2-12 of appellants' specification.

Again the Office characterizes the fading fish (78) of Olson et al. as the recited color gradation. However, the location of the fading fish (78) does not change upon wetting of the pant of Olson et al. That is, the higher intensity (non-faded graphic) area is in precisely the same location as the lower intensity (faded graphic) area. There is no direction at all associated with the variation in color intensity provided by the fading fish (78) of Olson et al. As such, Olson et al. clearly further fail to teach or suggest the color intensity

varying from the waist region toward the crotch region of the article as recited in claim 15.

On page 7, second full paragraph of the final Office action, the Office takes the position that the permanent graphic (e.g., the dog 70) and an area of the article having no graphic anticipates claim 15. However, claim 15 recites that a color gradation providing a coloration which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region. In other words, the color gradation provides an area of incremental change from a higher intensity area to a lower intensity area. The intensity change from the permanent graphic to a graphic free portion of the article is abrupt and therefore is not a color gradation. Color gradation requires incremental change in color intensity and not an abrupt change as opined by the Office.

For the above reasons, claim 15 is submitted to be unanticipated by and patentable over Olson et al.

Claims 16 and 17 depend from claim 15 and are submitted to be patentable over Olson et al. for the same reasons as claim 15.

Claim 23

Claim 23 is directed to a disposable absorbent article having an area which is visible when the article is worn, a permanent graphic comprising a color gradation in said area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color, and a visible element separate from said permanent graphic and disposed in said area at a location where the coloration of said color gradation is of lower intensity or absent such that the

visible element remains visible and is not obscured by the color gradation.

The essence of claim 23 is the provision of a permanent graphic that comprises a color gradation on a visible area of the article, with the coloration gradation providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color. The term "permanent graphic" is defined in the present application (and the same definition is used in Olson et al.) at page 3, lines 22-25 as meaning that the graphic does not substantially change its degree of visibility when the absorbent article is insulted. In other words, the color gradation does not change in visibility when the absorbent article becomes wet.

Claim 23 is submitted to be unanticipated by and patentable over the references of record, and in particular Olson et al., in that whether considered alone or in combination the references fail to disclose or suggest an absorbent article comprising a permanent graphic having the recited color gradation.

Olson et al., as discussed above, disclose that the fading fish (78) substantially changes its degree of visibility upon becoming wet (or staying dry for a period of time). The Office action characterizes the change of the fading fish (78) from its first state (non-faded graphic) to its second state (faded graphic) as a color gradation. However, Olson et al. clearly teach that the fading fish (78) is an active graphic that changes visibility upon becoming wet (or staying dry), and not a permanent graphic that does not change visibility upon becoming wet as recited in claim 23. Accordingly, Olson et al. fail to disclose or even suggest a permanent graphic that has a color gradation.

For these reasons, claim 23 is submitted to be patentable over the references of record.

Claim 24

Claim 24 is directed to a disposable absorbent article comprising a color gradation that is visible when the article is worn. The color gradation comprises a coloration that varies in intensity from an area of higher intensity of color to a separate area of lower intensity of color. A visible element separate from the color gradation is disposed at a location where the coloration of the color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation. Claim 24 thus makes it clear that with respect to the recited color gradation, the area of lower color intensity is separate from (e.g., adjacent to so as to provide the recited gradation) the area of higher color intensity.

Claim 24 is submitted to be unanticipated by and patentable over Olson et al., in that the reference fails to disclose or suggest an absorbent article comprising a color gradation having an area of higher color intensity and a separate area of lower color intensity.

Olson et al., as discussed above, disclose that the fading fish (78) changes visibility upon becoming wet (or staying dry for a period of time). The Office action characterizes the change of the fading fish (78) from its first state (non-faded graphic) to its second state (faded graphic) as a color gradation. However, the location of the fading fish (78) does not vary. As such, the area defined by the asserted higher color intensity (i.e., the fish in its non-faded condition) is exactly the same as the area defined by the asserted lower color

intensity (i.e., the fish in its faded condition). Accordingly, Olson et al. fail to disclose, or even suggest, the color gradation having an area of lower color intensity that is separate from the area of higher color intensity.

For these reasons, claim 24 is submitted to be patentable over the references of record.

VIII. CONCLUSION

For the reasons stated above, appellants respectfully request that the Office's rejections be reversed and that claims 1-13, 15-17, 19, 20, 23 and 24 be allowed.

Respectfully submitted,

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CLAIMS APPENDIX

1. A disposable absorbent article having an area which is visible when the article is worn, a color gradation in said area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color when the area is dry, and a visible element separate from said color gradation and disposed in said area at a location where the coloration of said color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation.

2. A disposable absorbent article as set forth in claim 1 wherein said visible element is a graphic.

3. A disposable absorbent article as set forth in claim 1 wherein said visible element is a registration mark.

4. A disposable absorbent article as set forth in claim 1 wherein said visible element is a wetness indicator.

5. A disposable absorbent article as set forth in claim 4 further comprising an outer cover having an interior surface and an exterior surface, and an absorbent material disposed on said

interior surface of the outer cover, said color gradation and said wetness indicator being disposed on said outer cover.

6. A disposable absorbent article as set forth in claim 4 wherein said wetness indicator comprises an active graphic.

7. A disposable absorbent article as set forth in claim 5 wherein the article is a pant having a front region, a back region, and a crotch region, said wetness indicator being on a portion of the crotch region which is substantially free of color.

8. A disposable absorbent article as set forth in claim 7 wherein said coloration changes from higher intensity to lower intensity generally in the direction of said crotch region.

9. A disposable absorbent article as set forth in claim 7 wherein the pant further has side edges, said coloration changing from higher intensity to lower intensity generally in the direction of at least one of said side edges.

10. A disposable absorbent article as set forth in claim 8 or 9 wherein said color gradation involves only one color.

11. A disposable absorbent article as set forth in claim 8 or 9 wherein said color gradation involves a combination of different colors.

12. A disposable absorbent article as set forth in claim 1 further comprising a graphic on said article, and a registration mark on said article for use in positioning said graphic on the article.

13. A disposable absorbent article as set forth in claim 12 wherein said article is a pant having a crotch region, and wherein said registration mark is located on said crotch region.

15. A disposable absorbent pant having a front waist region, a back waist region and a crotch region extending between and interconnecting said front and back waist regions, said pant comprising an outer cover with an interior surface and an opposite exterior surface, an absorbent material disposed on the interior surface of the outer cover, a color gradation on an area of the pant which is visible when the pant is worn, said color gradation providing a coloration which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region when the pant is dry, and a wetness indicator separate from said color

gradation and disposed in said crotch region at a location where the coloration of said color gradation is of lower intensity or absent such that any indication of wetness by the wetness indicator remains visible and is not obscured by the color gradation.

16. A disposable absorbent pant as set forth in claim 15 wherein said wetness indicator comprises an active graphic.

17. A disposable absorbent pant as set forth in claim 15 wherein said color gradation is printed in said area.

19. A disposable absorbent article as set forth in claim 1 wherein said color gradation is printed on the article in said area.

20. A disposable absorbent article as set forth in claim 19 wherein said color gradation is printed with a permanent ink.

23. A disposable absorbent article having an area which is visible when the article is worn, a permanent graphic comprising a color gradation in said area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color, and a visible element

separate from said permanent graphic and disposed in said area at a location where the coloration of said color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation.

24. A disposable absorbent article comprising a color gradation that is visible when the article is worn, said color gradation comprising a coloration that varies in intensity from an area of higher intensity of color to a separate area of lower intensity of color, and a visible element separate from said color gradation and disposed at a location where the coloration of said color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.